

## **REMARKS**

The February 6, 2009 Official Action has been carefully considered. In view of the amendment submitted herewith and these remarks, favorable reconsideration and allowance of this application are respectfully requested.

At the outset, it is noted that a shortened statutory response period of three (3) months was set in the February 6, 2009 Official Action. Accordingly, the initial response period is due to expire May 6, 2009. This amendment and request for reconsideration is being filed before the expiration of the initial response period.

As another preliminary matter, it is noted as the result of the requirement for restriction set forth in the preceding Official Action, which has been made final in the present Official Action, claims 1-31 have been withdrawn from consideration herein. Applicants wish to reiterate that their election of the subject matter of claims 32-37 in response to the aforementioned restriction requirement is without prejudice to their right to file one or more divisional applications, as provided in 35 USC §121, for the subject matter of the withdrawn claims.

In the February 6, 2009 Official Action, claim 32 stands rejected for allegedly failing to satisfy the enablement requirement of 35 USC §112. According to the examiner, the specification does not enable any person skilled in the relevant art to make and/or use the invention commensurate in scope with claim 32. The examiner acknowledges, however, that the specification is enabling for certain glycosyl groups represented by the R<sub>2</sub> and R<sub>5</sub> substituents in formula I, including ones described at pages 11-12.

Claims 32-37 have been rejected under 35 USC §102(b) as allegedly anticipated by U.S. Patent 6,147,197 to Or et al. In support of this rejection, the examiner relies on the compound of formula II, shown at columns 2-8 of Or et al., in which X = —CO, R<sub>1</sub>, R<sub>4</sub>, R<sub>6</sub>, R<sub>9</sub>, R<sub>10</sub> and R<sub>12</sub> = —CH<sub>3</sub>, R<sub>2</sub> and R<sub>3</sub> together represent a keto group, R<sub>5</sub> = a glycosyl group having a hydroxy protecting group, R<sub>7</sub> = —OH, R<sub>8</sub> = —H, R<sub>11</sub> and R<sub>13</sub> = -OH and R<sub>14</sub> = ethyl.

The foregoing rejections constitute all of the grounds set forth in the February 6, 2009 Official Action for refusing the present application.

In accordance with the present amendment, the claim term “glycosyl group” in claim 32 has been further characterized as being “selected from the group consisting of O-cladinoses, O-mycaroses, O-rhamnosides, 2'-O-methyl rhamnoside, 2',3'-bismethyl rhamnoside, 2',3',4'-tris-O-methyl rhamnoside, O-digitoxose, O-olivose, O-oliose, O-oleandrose, O-desosamine, O-mycarminose,

O-angolosamine and O-megosamine". In addition, the clause "or a variant of a compound . . . from the group: -CO-, -CH(OH), alkene CH-, and CH<sub>2</sub>)" has been deleted.

Claims 1-31, which have been withdrawn from consideration in this application, as noted above, have been cancelled by the present amendment. Claims 1-31 have been cancelled solely in the interest of advancing prosecution of the present application.

No new matter has been introduced into this application by reason of the present amendment, entry of which respectfully requested.

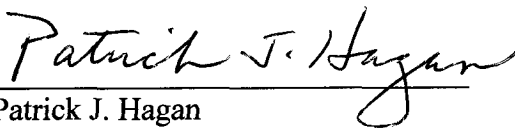
As a result of the present amendment, claim 32 is drawn to compounds of formula I in which the glycosyl groups are selected from those that are plainly supported and enabled by the present specification. See, in addition to the aforementioned disclosures, page 17, line 12 through page 19, line 11 and Example 10 of the present specification.

Furthermore, as presently amended, claim 32 cannot be held to read on formula II of Or et al. It is noted in this regard that substituent R<sub>14</sub> in formula I of claim 32 does not represent an ethyl group. It must be concluded, therefore, that Or et al. cannot constitute evidence of anticipation in this case, as it fails to identically disclose or describe the compounds claims by applicants herein. *Cf., In re Arkley*, 172 USPQ 524 (CCPA 1972).

In view of the present amendment and the foregoing remarks, it is respectfully submitted that each of the rejections set forth in the February 6, 2009 Official Action has been overcome. Accordingly, the issuance of a Notice of Allowance is believed to be in order, and such action is earnestly solicited.

Respectfully submitted,

DANN DORFMAN HERRELL and SKILLMAN  
Attorneys for Applicant

By   
Patrick J. Hagan  
Registration No. 27,643

Customer Number 000110  
(215) 563-4100 (telephone)  
(215) 563-4044 (facsimile)  
[phagan@ddhs.com](mailto:phagan@ddhs.com) (email)